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S.A.Nos.40, 30, 25 & 28 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.40, 30, 25 and 28 of 2024

and

C.M.P.Nos.900 and 702 of 2024

A.Velusamy

... Appellant
(in all Second Appeals)

-VS-

1. Dr.S.Senthilkumaran

... sole respondent in
S.A.Nos.25&30of 2024
and 1st respondent in
S.A.Nos.28&40of 2024

2.The Assistant Engineer,
TANGEDCO (TNEB),
Gopi Electricity Distribution Circle,
Ponnampalayam,
Sathiyamangalam Taluk,
Erode District.

3.The Superintending Engineer,
TANGEDCO (TNEB),
Gopichettipalayam,
Erode District.

... R2 & R3 in
S.A.Nos.28&40of 2024



PRAYER in S.A.No.25 of 2024:

Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 15.12.2022 in A.S.No.50 of 2018 on the file of the III Additional District Judge, Gobichettipalayam, Erode, confirming and modifying the judgment and decree dated 16.12.2017 in O.S.No.84 of 2017 on the file of the Subordinate Judge, Sathyamangalam.

PRAYER IN S.A.No.30 of 2024:

Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 15.12.2022 in A.S.No.20 of 2018 on the file of the III Additional District Judge, Gobichettipalayam, Erode, confirming and modifying the judgment and decree dated 16.12.2017 in O.S.No.84 of 2017 on the file of the Subordinate Judge, Sathyamangalam.

PRAYER in S.A.No.28 of 2024:

Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 15.12.2022 in A.S.No.10 of 2019 on the file of the III Additional District Judge, Gobichettipalayam, Erode, confirming and modifying the judgment and decree dated 16.12.2017 in O.S.No.83 of 2017 on the file of the Subordinate Judge, Sathyamangalam.



S.A.Nos.40, 30, 25 & 28 of 2024

PRAYER in S.A.No.40 of 2024:

Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 15.12.2022 in A.S.No.19 of 2018 on the file of the III Additional District Judge, Gobichettipalayam, Erode, confirming and modifying the judgment and decree dated 16.12.2017 in O.S.No.83 of 2017 on the file of the Subordinate Judge, Sathyamangalam.

For appellant in all S.A.s : Mrs.G.Sumitra
for Mr.W.M.Abdul Majeed

For respondent
in S.A.Nos.25 & 30 of 2024
and
R1 in S.A.Nos.28 & 40 of 2024 : No appearance

COMMON JUDGMENT

Since the facts and the issues involved in all these 4 second appeals arise from two suits in O.S.No.83 of 2017 and O.S.No.84 of 2017 on the file of the Sub Court, Sathyamangalam, a common judgment is pronounced in the above second appeals.

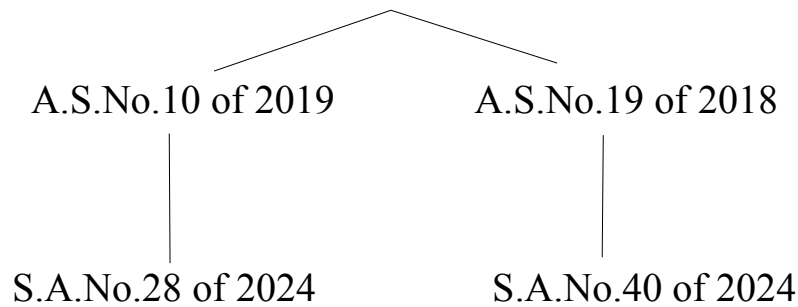


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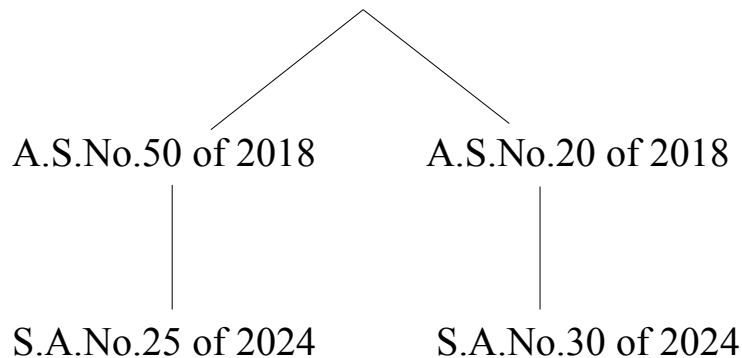
2. Before proceeding to set out the facts of the case, it would be useful to give a brief detail of the second appeals and other respective judgments under these appeals.

3. The details of the second appeals and the respective judgments from which they arise, are depicted in the form of chart as given below.

O.S.No.83 of 2017



O.S.No.84 of 2017





4. The suit in O.S.No.83 of 2017 was filed by one Dr.Senthilkumar who is the defendant in the suit in O.S.No.84 of 2017 and TANGEDCO. For ease of understanding, the parties are referred to in the same ranking as in the suit in O.S.No.83 of 2017 which is the suit for declaration, injunction and interim injunction.

FACTS OF THE CASES:

4.1. The suit in O.S.No.83 of 2017 was filed by the plaintiff seeking declaration of his title to the suit property and consequentially, granting permanent injunction restraining the first defendant, his men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and for a direction to the second defendant to remove the electricity service connection given in the suit property in the name of the first defendant.

4.2. It is the contention of the plaintiff that on 29.02.2016, he had purchased the suit property for a valuable sale consideration from the first defendant and has been put in the possession in the same.



Thereafter, he had also mutated the revenue records in his name. The plaintiff would submit that prior to his purchase, the first defendant had leased out the shed made of cement sheet to the TASMAC and the plaintiff had taken steps to collect the rents after his purchase.

4.3. While so, on 27.04.2017, the first defendant had attempted to install a hut in the said property which was prevented by the plaintiff. The first defendant thereupon submitted that if the plaintiff pays an additional sum of Rs.5,00,000/- (Rupees Five Lakhs only), he would stop his attempts to enter the premises. On 27.04.2017, the defendant lodged a false criminal complaint against the plaintiff. On the next day, i.e., on 28.04.2017, the plaintiff had lodged a police complaint with the police and has also questioned the second defendant regarding the grant of illegal service connection in the name of the first defendant despite the fact that the plaintiff is the owner of the property. On 29.04.2017, the plaintiff made a representation to the second defendant. However, the defendants 2 and 3 informed the plaintiff that they could effect the disconnection only on the orders of the Court.



Therefore, the plaintiff has come forward with the suit in question.

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4.4. The first defendant has filed a written statement *inter alia* contending that the suit property is the ancestral property of his father Aayi Gounder. On 16.09.2009, Aayi Gounder had executed a settlement deed in favour of the first defendant and thereafter, he has taken the possession and was in enjoyment of the same. He would submit that the revenue records also stand in his name.

4.5. The first defendant would further submit that he had leased out the property to one Karthik Prasad for a period of 10 years commencing from 10.04.2015 and possession was also given to him and one portion was leased out to TASMAL.

4.6. It is the further case of the first defendant that he has been running a petrol bunk in the adjacent property. In the course of his business, he has incurred loss on account of the sudden fall in the prices of petrol and diesel in the year 2016. Further, the first defendant



was selling 1,000 litres of petrol and 500 litres of diesel per day and taking into account the quantity of sale of petrol, there was a necessity to install another pump. To tide over this crisis, he required financial assistance. The first defendant had approached one Marimuthu, his wife Gomathi and his father-in-law Natarajan, to give him a loan of Rs.50,00,000/- (Rupees Fifty Lakhs only). They had introduced the first defendant to the plaintiff who is a money lender. The plaintiff had agreed to give the money, but, demanded a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as commission. This was also agreed to since the first defendant was in an urgent need of money. In addition to this, the plaintiff also demanded the first defendant to execute a sale deed as security. Therefore, the first defendant had executed a sale deed on 29.02.2016 in favour of the plaintiff. It is the further case of the first defendant that the interest payable by him was a sum of Rs.2/- for every Rs.100/-.

4.7. In addition to all the above securities, the first defendant had also given 4 blank cheques drawn on his bankers, The Indian Bank.



The first defendant would finally submit that the value of the property was over a sum of Rs.4,00,00,000/-(Rupees Four Crores only), therefore, by no stretch of imagination, would he sell the property for a paltry sum of Rs.5,00,000/-(Rupees Five Lakhs only). The first defendant would further submit that he was ready and willing to repay the sum of Rs.55,00,000/-(Rupees Fifty Five Lakhs only) received by him as loan and therefore, he sought for the dismissal of the suit.

4.8. The defendants 2 and 3, who are the TANGEDCO, had filed a common written statement *inter alia* contending that the first defendant had made an application for the supply of electricity to the premises bearing Door No.193/1 on 15.04.2016. The application was accompanied by house tax receipts dated 02.03.2016. Therefore, in keeping with the relevant rules of the Distribution Code, the supply had been effected. They would further submit that as per the Tamil Nadu Electricity Supply Code, 2004, the disconnection of electricity service connection will be effected only for non-payment of the electricity charges and there is no other specific provision empowering the



Electricity Board to disconnect the service connection on the compliants made by third parties. These defendants would submit that the matter was primarily a dispute relating to the ownership of the property between the plaintiff and the first defendant and it is only the Civil Courts which have the jurisdiction to determine the rights of the parties. They had further submitted that they are ready and willing to abide by any orders passed by the Court.

4.9. The suit in O.S.No.84 of 2017 was filed by the first defendant against the plaintiff for cancelling the sale deed dated 29.02.2016 executed by the first defendant in favour of the plaintiff as void and not enforceable and not acted upon and for permanent injunction restraining the plaintiff, his men or anyone claiming under him from alienating the property. The suits were tried together.

TRIAL COURT:

5. In the suit in O.S.No.83 of 2017, the learned Judge has framed the following issues .



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“1. 29.02.2016 தேதியிட்ட கிரையப் பத்திரத்தின்படி வாதி சொத்தின் உரிமையாளர் என்பதும், சொத்தின் சுவாதீனம் ஒப்படைக்கப்பட்டது என்பதும் உண்மையா?

2. வாதி வழக்குரையில் கோரியுள்ளபடி உரிமை மூல விளம்புனை பரிகாரம் கிடைக்க கூடியதா?

3. வாதி வழக்குரையில் கோரியுள்ளபடி நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்க கூடியதா?

4. வாதி வழக்குரையில் கோரியுள்ளபடி செயலுறுத்துப் பரிகார கட்டளை கிடைக்க கூடியதா?

5. தரப்பினர்களுக்கு கிடைக்கும் வேறு பரிகாரங்கள் என்ன?”

6. In the O.S.No.84 of 2017, the learned Judge has framed the following issues.

“1. 29.02.2016 தேதியிட்ட கிரையப் பத்திரமானது வாதி பிரதிவாதிடம் வாங்கிய கடனுக்காக பிணையமாக எழுதிக் கொடுக்கப்பட்ட ஆவணம் என்பது உண்மையா?

2. வாதி வழக்குரையில் கோரியுள்ளபடி 29.02.2016 தேதியிட்ட கிரையப் பத்திரம் சட்டப்படி செல்லாது என்ற பரிகாரம் கிடைக்க கூடியதா?

3. வாதி வழக்குரையில் கோரியுள்ளபடி நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெறத்தக்கவரா?

4. தரப்பினர்களுக்கு கிடைக்கும் வேறு பரிகாரங்கள் என்ன?”



7. Evidence was recorded in the O.S.No.83 of 2017. The plaintiff had examined himself as P.W.1 and one Deepakdurai as P.W.2 and marked Exs.A1 to A10. On the side of the defendants, the first defendant had examined himself as D.W.1 and one Nagaraj as D.W.2 and marked Exs.B1 to B6.

8. The learned Subordinate Judge, on considering the evidences on record, has held that the sale deed which is a registered document stood proved. The first defendant who has come out with a case that the sale deed had been executed as a security and a loan of a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) borrowed for the business purposes, has failed to prove the same.

9. The learned Judge has observed that the contention of the first defendant that the amount was borrowed for business reasons has not been proved by him. The learned Judge had also observed since the first defendant was pleading against the contents of the registered documents, the onus is on him to prove the case and the same has not



been discharged by him. The sale deed has been executed by him in favour of the plaintiff only with an intent to sell the property.

10. The Trial Court, however, after declaring the title of the plaintiff to the suit property, had rejected the relief of permanent injunction since the plaintiff had not proved the possession of the property. P.W.1 had admitted to the fact that the rents from TASMACH were still being received by the first defendant and steps to transfer the lease in favour of the plaintiff have not been taken. Therefore, the Trial Court has held that the defendant was deemed to be in possession.

11. The Trial Court has also observed that the contention of the first defendant that the property had been leased to one Karthik Prasad appears to be true, since, there was a flex board installed in the suit property by the said Karthik Prasad who is running a company in the name and style of “Ramana Building Material Suppliers”. Therefore, the suit in O.S.No.83 of 2017 was partly decreed by the learned Trial Judge. The title of the plaintiff to the suit property *vide* sale deed dated



29.02.2016 was declared and the suit was dismissed with the relief of permanent injunction and mandatory injunction. The suit in O.S.No.84 of 2017 was dismissed and it was directed that the first defendant can be evicted from the property by due process of law.

LOWER APPELLATE COURT:

12. Challenging this judgment and decree in O.S.No.83 of 2017, the first defendant has filed an appeal in A.S.No.10 of 2019 and the plaintiff has filed an appeal in A.S.No.19 of 2018. Against the judgment and decree in O.S.No.84 of 2017, the plaintiff has filed an appeal in A.S.No.50 of 2018 and the first defendant has filed an appeal in A.S.No.20 of 2018. The learned III Additional District Judge, Gobichettipalayam, had dismissed A.S.No.10 of 2019 and confirmed the judgment and decree in O.S.No.83 of 2017 and the appeal in A.S.No.19 of 2018 was allowed and the suit in O.S.No.83 of 2017 was decreed as prayed for. The appeal in A.S.No.50 of 2018 was dismissed and the decree passed by the Trial Court that the first defendant can be evicted from the property only by due process of law, was set aside.



The appeal in A.S.No.20 of 2018 filed by the plaintiff was allowed.

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13. Challenging the aforesaid judgments, the first defendant had filed the above appeals.

14. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

15. The Lower Appellate Court has reversed the judgment and decree of the Trial Court with reference to the possession. The Appellate Court took note of the fact the first defendant's plea is that the property was not in the possession of the plaintiff, on account of the fact that he had entered into a 10 year lease with one Karthik Prasad, pursuant to which, the said Karthik Prasad was in possession of the property. The Lower Appellate Court noticed that the lease deed which has been marked as Ex.B3 was one that cannot be received in evidence as it was an unregistered lease deed though the lease is for a period of



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16. That apart, Karthik Prasad who was a tenant had filed a suit in O.S.No.110 of 2017 without impleading the plaintiff and only against the first defendant. The plaintiff, on coming to know about the said suit, has immediately got himself impleaded in the said proceedings. Once the plaintiff has himself got impleaded in the proceedings, the said Karthik Prasad had not contested the suit and allowed the same to be dismissed for default. The Lower Appellate Court has, therefore, disbelieved the contention of the first defendant that even prior to the sale in favour of the plaintiff, the property had been leased out to the said Karthik Prasad.

17. The learned Judge had observed that these documents appear to be fabricated, since for a lease of a property at Sathyamangalam, the stamp paper has been purchased at Sivagangai and the sale had not been registered. The Trial Court had also taken note of the fact that after the purchase of the property the plaintiff had



addressed a letter dated 29.04.2017 which has been marked as Exs.A9 to attorn the tenancy in the name of the plaintiff. Therefore, the findings of the Trial Court in this regard and the judgment rejecting the relief of permanent injunction and mandatory injunction was reversed by the Lower Appellate Court and consequentially, the decree passed in O.S.No.84 of 2017 that the first defendant should be evicted from the premises only through due process of law, has also been set aside.

18. As held by the Courts below, the first defendant who has come forward with the case that the sale deed has been executed only as a security has failed to prove the same. Therefore, the sale deed being the registered document, the Courts below have clearly held that the sale deed is a valid one and has been acted upon. The plaintiff has taken steps to attorn the tenancy in respect of the property viz., TASMAL in his favour by issuing a letter Ex.A9. That apart, it has been clearly established that the lease deed alleged to have been entered into between the first defendant and Karthik Prasad is a fabricated and concocted document created for the sole purpose of denying the



plaintiff's possession. Therefore, the first defendant who claims that he is continuing to collect the rents from TASMAL has not submitted any document to prove the above said contention. The plaintiff had filed a suit for the consequential relief of injunction restraining the defendant from alienating the property.

19. The Trial Court has exceeded the jurisdiction in granting the decree restraining the first defendant from being evicted only by due process of law, when the relief claimed was only with reference to alienation. The fact that the first defendant has sought for injunction would go to show that he is not in the possession of the property.

20. I, therefore, see no reason to interfere with the well-considered judgment and decree of the Trial Court and the Lower Appellate Court which has modified the judgment and decree of the Trial Court.

Accordingly, these second appeals stand dismissed as the



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appellant has not made out any substantial question of law.

Consequently, connected C.M.P. petitions are closed. No costs.

18.01.2024

Index : Yes/No

Speaking order/non-speaking order

ssa

To

1. The III Additional District Court, Gobichettipalayam.
2. The Sub Judge, Sathyamangalam.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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